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# ANALYSIS OF RAPE LAWS UNDER IPC

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## **ABSTRACT**

In this research paper, researcher basically deals with Section 375 of the Penal Code of India, 1860. The researcher's aim is to analyze this section in detail. The researcher will deal with both, meaning and the essential elements. In this era, each and every country focuses on the concept of equality. Even our constitution provides and tries to ensure equality through various articles, but the Indian Penal Code still has gender biases. In our country, fake feminism is taking place and the main reason for that is that the laws excessively favor women.

This paper will also talk about the various provisions of the constitution that are being violated referring to Section 375 of the Indian Penal Code, 1860. This research paper will also look at the various amendments that have been made to date regarding rape law. It will also look at the gaps that still exist in Indian Legal System. An attempt is also made to highlight the need to make this section gender neutral. Recent developments regarding this topic will also be focused on this research article and the researcher also aims to find the view of the Supreme Court on the same. This paper will also analyze several amendments that have been made to date regarding rape laws in India and the reason and need for those changes and the loopholes that still exist in rape laws in the current Indian system. The researcher will also talk about marital rape and due to the rising false cases of women what suggestions and reforms can be incorporated for the safety of men.

**KEYWORDS:** Men, Gender Biased, Rape, Marital Rape, Legal System, Loopholes

## **INTRODUCTION**

The concept of rape has been known to the world throughout the ages of our civilization. In Indian history, rape it is not a new concept. The concept of punishing the offender of rape can be traced during the Mahabharata and Ramayana Times, for example Keechak Vath and the punishment given to Indra. Even in Islam, rape is a punishable offence from giving death sentence to stoning the offender. The modern era has also adopted criminal norms to punish violators of rape. In India, the Penal Code of India, 1860 was incorporated which describes the provisions on rape and its punishment in India. Later, many amendments were made to the IPC that helped to change the

face of rape laws in India. India is a developing state where women are granted various rights and everyone is treated equally. But, the problem arises when; to give women equality and empowerment other genders are neglected. There are laws which are made for the protection and elevation of women, but some of the laws completely favor women and neglect man. In this paper, we are talking about Section 375 of the Indian Penal Code, 1860 which deals with the concept of rape. It is very controversial that we always claim for equality and in this we always assume that women are the sole victims. We do not recognize the male or transgender as the victim. It is very necessary to make this law gender neutral, as in this kalyug even both men and transgender people are raped.

### **RESEARCH QUESTIONS:**

By reviewing the literature on the topic of section 375 of IPC, the research questions are:

1. Are Indian rape laws effective?
2. What is the difference between the amendment made before and after 2013?
3. Is rape laws gender neutral?
4. What should be done in case where a minor is raped?
5. In Marital Rape, is wife a property to be used without consent?
6. What is the researcher's perspective on rape of males and what laws are there in India regarding rape of males?

### **RAPE UNDER IPC**

Rape” under [Section 375](#) of IPC is defined as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age<sup>1</sup>." In terms of crime rate, India recorded an average of 87 rape cases daily in 2019 and overall 4,05,861 cases of crime against women during the year, a rise of over 7% from 2018, the latest

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<sup>1</sup> Indian Penal Code, 1860, section 375, No. 45, Act of Parliament, 1860



government data released on September 29, 2020<sup>2</sup>. In addition, these crime rates are recorded as per the cases presented in court, but what about those incidents that are never reported at the police station due to illiteracy, lack of conscience, fear of respect, fear of society etc. In addition, we cannot blame the laws related to sexual crimes as after the outrage of severe cases, especially after the Nirbhaya case, the court has made very important amendments and by these amendments they have broadened the definition and scope of rape as before the amendment, the definition was only restricted to 'Sexual Intercourse' but after the 2013 Criminal Law Amendment Bill they have explained all definition and made it very clear. In IPC after the 2013 amendment, Section 228A was added which makes it guilty to reveal the character of the survivor of specific crimes, including rape.

### **REASON FOR AMENDMENT:**

On the night of December 16, 2012, Nirbhaya<sup>3</sup>, a 23-year-old student, was brutally gang-raped, beaten and tortured in a moving bus. After fighting for her life, she died on December 28, 2012. This barbaric incident sparked widespread protests across the country. The public demanded the hanging of the accused and also a change in the country's rape laws. Following the Nirbhaya incident on December 23, 2012, a three-member committee headed by the late Judge J.S. Verma, with other committee members was held to recommend amendments to criminal law for the legislature to make rape laws and other crimes against women more combated. This led to the 2013 Criminal Law Amendment.

### **DEFINITION AFTER AMENDMENT:**

Section 375 of the Indian Penal Code defines that a man is said to commit the crime of rape when:

- There is penetration of the penis to any extent in the vagina, mouth, urethra or anus of the woman or forces her to do it with him or with any other person.
- There is an insertion of any object or part of the body, not being the penis inside the vagina, urethra or anus of the woman or force her to do it with him or with any other person.

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<sup>2</sup> THE WIRE, <https://thewire.in/women/average-87-rape-cases-daily-over-7-rise-in-crimes-against-women-in-2019-ncrb-data>(last visited March 30, 2021).

<sup>3</sup> Mukesh and Anrs. Vs NCT Delhi (2017) 6 SCC 1

- There is manipulation in any part of the woman's body to cause penetration into the vagina, urethra, anus or any other part of the woman's body or makes her do it with him or with any other person.
- There is an application of his mouth in the vagina, anus, and urethra of the woman or makes her do it with him or with any other person.

The circumstances under which the man would be liable for rape are given under clause 1 to clause 7 in section 375 as follows:

- First, that the act was against her will, which means whether the act is performed under the reasoning power of the mind or not.
- Second, that it was done without her consent, which means that there was no communication with either words, gestures or any other non-verbal communication.
- Third, when there is consent, but that consent is obtained by putting her or any other person in whom she has an interest in the fear of death or harm.
- Fourth, when the woman gave her consent thinking that the person is her husband to whom she is legally married and the man is aware that the consent was given to the husband and not to him.
- Fifth, when the woman's consent exists, but the reason may be due to unsoundness of mind or intoxication or administration by him personally or through another of any narcotic and unhealthy substance by which she is not in a state to understand the consequence of her consent.
- Sixth, with or without consent when she is under 18 years of age.
- Seventh, she cannot communicate her consent.

Also, if a woman is not physically resistant to penetration, it does not mean that she is consenting to sexual activity. There are two exceptions provided in the section. They are:

Exception 1: When there is treatment or medical intervention, it will not constitute rape.

Exception 2: It is not considered rape when there is a sexual relationship or any sexual act by a husband with his own wife who is over 15 years of age.

## **INGREDIENTS:**

This section consists of the following:

- Sexual intercourse of a man with a woman.
- The sexual intercourse must be carried out in the circumstances included in any of the seven clauses of section 375 of IPC.

## **SEXUAL INTERCOURSE:**

A very important case that led to definitive amendments in the section is Sakshi v. Union of India and Ors<sup>4</sup>. Sakshi, an NGO that focuses on violence against women, petitioned the Supreme Court of India to declare that "rape" under IPC includes all forms of forced penetration. Sakshi claimed that the interpretation of the law before the 2013 amendment limits rape to forced penetration of the penis or vagina only. The words "sexual intercourse" in IPC Section 375 should be interpreted in such a sense that it includes all types of sexual penetration and not intercourse understood in the traditional sense.

During the Sakshi case, the Court ordered the Indian Law Commission to examine and respond to the issues raised by Sakshi. This exercise resulted in generation of the 172nd Report of the Law Commission of India. This report suggested that the crime of "rape" be substituted by "sexual assault", making the crime gender neutral and applicable to a variety of sexual crimes other than forced penetration of the penis or vagina and as of today, the rape law in India under Section 375 is amended and includes all forms of sexual assault and is not limited to only penis or vaginal intercourse.

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<sup>4</sup> Sakshi Vs. Union of India and Ors AIR 2004 SC 3566

## **ESSENTIALS:**

### **1. AGAINST HER WILL:**

The word "will" implies the faculty of the reasoning power of the mind that determines whether an act should be performed or not. There is a fine distinction between an act performed 'against the will' and 'an act performed without consent'. Any act performed 'against the will' is obviously 'without consent'. But any act 'without consent' is not 'against the will. This is explained in Clause (1) of this section. The concept of 'Against her will' was first explained by the court in the case of *Chotelal vs. State of Uttar Pradesh*<sup>5</sup>, where it was held that 'Against her will' means that the sexual intercourse has taken place even though the woman has resisted and opposed it. Another Case is in *Gurmit Singh vs. State of Punjab*<sup>6</sup>; a girl under the age of 16 was abducted from her school by the three defendants in a car, and was threatened with death if she raised the alarm. Despite her refusal, they forced her to drink liquor. She was then raped by each of them under the threat of being killed if she persisted in raising the alarm. The court acquitted the defendants for both kidnapping and rape charges disbelieving the prosecution's version regarding the rape and delay in FIR. Allowing the State to appeal, and holding the accused responsible for rape, the Apex Court held that the sexual intercourse was against her will, for which the accused are liable for committing rape under Section 376, IPC.

In addition to this, the Apex Court established the following guidelines for judgment in such cases:

- The delay in lodging the FIR is not material when properly explained.
- The testimony of the victim in cases of sexual assault is vital and, unless there are compelling reasons that require seeking corroboration of her statement, the Court should not find any difficulty in convicting the accused based solely on the testimony of the prosecution.
- Trial for sex crimes should be in camera and invariably by a lady judge whenever available.
- The court should refrain from making any statement that the accuser is likely to be a girl of loose moral character.

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<sup>5</sup> *Chotelal Vs. State of Uttar Pradesh* (2011) 2 SCC 550

<sup>6</sup> *Gurmit Singh Vs. State of Punjab* AIR 1996 SC 1393.

- The court has an obligation to ensure that the prosecution is not unnecessarily harassed and humiliated in cross-examination in the event of a rape trial.

## **2. WITHOUT HER CONSENT:**

The term "Consent" basically means the voluntary agreement by words, gestures, either in direct or indirect form, a form of verbal or non-verbal communication to enter into sexual intercourse. It is the most essential element to constitute rape because consensual intercourse does not amount to rape and, obviously, if intercourse has been performed by consent, then it overrides all provisions related to sexual offenses under the IPC. Furthermore, the man has no obligation to prove that whether or not consent existed at the time of sexual intercourse, the burden of proof is on the woman to prove consent.

### **COMPARISON BETWEEN AGAINST HER WILL AND WITHOUT HER CONSENT**

There is a significant difference between an act committed against the will and an act carried out without the consent of women.

An act performed by a willing person would mean that the person has consented to the act whereas; an act performed with consent cannot necessarily be interpreted as an act performed with his will. In *Holman v. Queen*<sup>7</sup>, it was stated that the will need not constitute consent. A woman who gives consent would be reluctant, hesitant and reluctant, but she consciously allows it, so it is consent. In the *Chhotey Lal Vs. State of Uttar Pradesh*<sup>8</sup>, the court stated that the expression against their will and without their consent may overlap but have different connotations and dimensions, the expression against their will would mean that this act is carried out by a man despite her resistance and opposition. The other without your consent would mean a deliberate act.

#### **A. CONSENT OBTAINED UNDER FEAR OF DEATH OR HARM**

Section 375 (c) of the IPC states that the consent of the woman to exonerate the accused from the charge of rape must be given freely and voluntarily without fear of death or injury. In such case, the consent obtained will not be a valid consent. The scope of the clause has been broadened by the Criminal Law Act 1983 by inserting the words "or any person in whom she is interested" in

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<sup>7</sup> *Holman Vs. Queen* (2010) SC 183/1/09

<sup>8</sup> *Chhotey Vs. State of Uttar Pradesh* (2011) 2 SCC 550

the clause. In the case of Prakash vs. State of Maharashtra<sup>9</sup>, the Supreme Court held that when a police officer and businessman had sexual intercourse with a woman by beating her husband and threatening to put him in police custody, the act falls under clause (3) of section 375 IPC. There does not need to be an actual use of force; a threat of use of force is sufficient.

### **B. CONSENT OBTAINED UNDER A MISCONCEPTION THAT THE PERSON IS THE HUSBAND OF THE WOMAN**

As per Section 375 (4) of the IPC, consent given by a woman to a person to have sexual intercourse in the belief that that person is her husband when, in fact, he is not her husband, does not constitute legal consent. In such a situation, the person knows the fact of the deception and pretends to be the woman's husband.

In Bhupinder Singh vs. Union Territory of Chandigarh<sup>10</sup>, plaintiff Manjit Kaur married the defendant Bhupinder Singh, whom she had met at work, in 1990 and began living with him in Chandigarh. She became pregnant but was accused of aborting the fetus in 1991. When she became pregnant again in 1994, she met two of her husband's friends who told her that he was already married and had children from his first wife. When confronted, her husband left her under the pretext of working and did not show up even after she gave birth to a daughter. She filed a complaint and was found guilty of rape because the prosecution married the defendant without knowledge of his first marriage. Consent to cohabitation was given under the belief that the accused was her husband. It was also argued that the delay in the presentation of the complaint by the prosecution could not, in any case, eliminate the crime because there was no consent. Therefore, the Supreme Court refused to interfere with the conviction order issued by the High Court.

### **C. CONSENT OBTAINED WHEN SHE IS INTOXICATED OR IS OF UNSOUND MIND ETC**

As per Section 375 (5) of the IPC, if the consent of the woman who at the time of giving consent was intoxicated or not in her right mind or if the consent is taken by the administration of any Narcotic substance to which the woman is unaware of, then in such cases, it is presumed that the

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<sup>9</sup> Prakash Vs. State of Maharashtra AIR 1992 SC 1275

<sup>10</sup> Bhupinder Singh Vs. Union Territory of Chandigarh (2008) 3 Cri.LJ 3546 (SC).

woman's consent is not free and voluntary and the person would be held liable for the charge of rape. In the case of *Tulsidas Kanolkar v. State of Goa*<sup>11</sup>, where the defendant had sexual intercourse with the girl when she was intoxicated and the girl later became pregnant. He was found liable by the Apex court and sentenced to a rigorous 10-year prison term with a fine of Rs 10,000.

#### **D. CONSENT OF A GIRL UNDER 18 YEARS OF AGE**

As per Section 375 (6) of the IPC, a man is said to commit rape if the consent of a girl under the age of eighteen has been taken. Before 2013 amendment, the age for consent was sixteen years, but after the Criminal Amendment Act of 2013, it was extended to eighteen years because of the Nirbhaya Case to prevent sexual crimes and abuse of adolescent girls. In the case of *Harpal Singh*<sup>12</sup>, the High Court held that even if the 15-year-old girl is a voluntary party and invites the accused to have sexual intercourse with her; then the accused would be liable for rape.

#### **PROMISE OF MARRIAGE**

Through this concept, one will understand the difference between a "breach of promise" and a "false promise." A breach of the promise is done in the form of good faith, where the consent to have sexual intercourse is made by the promise to marry, but then the situations and circumstances are such that later he refuses to marry, which does not amount to rape because the intention was good at the time of sexual intercourse and he really wanted to marry her later, whereas a “ false promise” includes consent obtained just for having sexual intercourse with a woman and has bad faith at the time of obtaining consent, and also the promise to marry was used as a tool to obtain consent, therefore this amounts to rape. Therefore, it totally depends on the intention of the man or the woman, however, the burden of proof falls on the woman to prove the mala fide intention of the man.

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<sup>11</sup> *Tulsidas Kanolkar v. State of Goa* (2003) 8 SCC 590

<sup>12</sup> *Harpal Singh Vs. State of Himachal Pradesh* AIR 1981 SC 361

## **CAUSES OF RAPE:**

### **JUDGED FOR THE WAY GIRLS ARE DRESSED**

In India, women are often judged on the basis of clothing they wear. If a woman wears short clothes, then it is automatically assumed that she wants to expose herself in an inappropriate way and that it is assumed that her clothing is itself giving consent for sexual activity.

### **ENCOURAGE RAPE VICTIMS TO COMPROMISE**

Whether male or female, we Indians primarily believe in the concept that let things remain at home to keep respect and dignity and by filing rape case and fighting for justice will ruin the respect and dignity, therefore, it is advisable to compromise with the accused. This encourages the rape offender. Often compromise is regarded as the best solution for this.

### **LACK OF SELF-CONTROL**

The crime of rape is committed because people lack self-control. Often sex videos that sexually arouse you are available on the internet and then by seeing it, people lose self-control and they become animals and feel so provoked that they just need to have sex, no matter what<sup>13</sup>. Sometimes, they stoop so low that they even rape animals to satisfy themselves.

## **IMPORTANT CASE LAW:**

### **KATHUA RAPE CASE<sup>14</sup>**

In January 2018, an eight-year-old girl in the town of Rasana near Kathua in Jammu and Kashmir was kidnapped, raped and killed by a gathering of men. On June 10, 2019, six of the seven defendants were found guilty and one was acquitted. Sanji Ram, Deepak Khajuria and Pravesh Kumar were sentenced to life in prison for 25 years, along with a fine of ₹ 1 lakh. The other three defendants, Tilak Raj, Anand Dutta and Surender Verma, were sentenced to five years in prison

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<sup>13</sup> PSA Pilla's, Criminal Law,(14th ed.),2019

<sup>14</sup> Mohd. Akhtar vs The State Of Jammu And Kashmir (2018) WP(Crl.) 85(SC)



for destroying crucial evidence in the case. The court acquitted Sanji Ram's son, Vishal, for lack of evidence. The eighth defendant, Sanji Ram's younger nephew, was tried in juvenile court.

Another new area was incorporated into the IPC to explicitly handle the rape of a young girl under 16 years of age. The arrangement made the crime guilty with the shortest 20-year detention that can lead to detention forever. The base prison sentence for rape, which has not changed since the introduction of the IPC in 1860, was extended from seven to ten years.

The approved punishment for rape changes and depends on various conditions. Therefore, the courts are free to impose disciplines from the age of 7 to lifetime detention. The sentence awarded must be based on the frankness of the accused, the status and age of the woman explicitly attacked, and the seriousness of the criminal manifestation.

Rape is an attack on the body and character of the victim that leaves an unchanging scar on her person and that the people assigned to handle these cases must approach the problems in a progressively delicate and accommodating way.

### **GENDER NEUTRALITY OF SECTION 375:**

Section 375 does not recognize man and transgender as the victim. In 2013, the congress government passed an ordinance which replaced "sexual assault" for "rape." This ordinance made the recognition of man as victim and woman as perpetrators, but the word "rape" as described in Section 375 of IPC was a significant omission for men. The offence of rape does not recognize men as victims even today. This proves that though the center was reluctant to make rape laws gender neutral which is why they used the term "sexual assault" where men also become victims but this has not been successful due to the gender biasness. In 2013, Judge Kailash Gambhir had made a comment that women out of anger and frustration tend to convert consensual sex as a rape which in itself defeats the purpose of Section 375 of IPC.

## **REASON FOR BIASNESS:**

### **BIASNESS IN SECTION 375**

According to Section 375, its definition begins with “when a man is said to commit a crime of rape. In this section it is clearly mentioned that only a man can commit rape and then in the given conditions, we only speak of women as victims. The definition itself recognizes man as the accused and women as the victims.

### **PROMISE OF MARRIAGE**

If a man promises a woman that he will marry and engage in having sexual intercourse with her with a malafide intention and then, if he refuses to marry her, then it amounts to rape. But if there is a conservative-minded boy who doesn't believe in the idea of sex before marriage and still agrees to indulge in such activity only at the insistence of women who promises to marry but does not marry, and then this should be also considered as rape. But under section 375, this condition is not taken as rape. There is no provision for such a case.

### **AGE OF CONSENT**

If a 16-year-old boy and girl have consensual sex, then also but the boy will be charged with rape whereas in this case, both of them should be held liable. But it is given that sexual intercourse with a woman under the age of eighteen will amount to rape, whether done with or without her consent<sup>15</sup>. In the example stated above, both parties are of the same age and both are engaged in the same activity by consent, then both of them should be held liable and not only the boy.

## **RECENT HAPPENING:**

The petition was presented by an NGO through Attorney Ashima Mandela, alleging that Section 375 violates Articles 14, 15 and 21 of the Constitution, since it does not take into account the rape of men and transgender. It was alleged that the definition of rape under section 375 of the IPC is ultra vires for being discriminatory and violates article 14, article 15 and article 21 of the

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<sup>15</sup> Bishnu Dayal v State of Bihar, Air 1981 SC 39

Constitution. The petitioners alleged that section 375 applies only to women as victims and men as perpetrators. That does not take into account the crime inflicted on a man or on a transgender. But a bench headed by the Honorable Chief Justice Ranjan Gogoi and Judge SK Kaul said that the issue raised in the petition is the matter of the legislative power and not of the judiciary.<sup>16</sup>

### **MARITAL RAPE:**

Marriage is viewed as a contract between two parties that legalizes sexual relations. A marriage can be called a sacramental or contractual relationship. As the very meaning says that marriage legalizes sexual relations, it means that any sexual act in the course of marriage is not wrong and is legal. This is very reason for people to get involved in the act of marital rape. Marital rape is nothing more than a sexual relationship between married couples without the consent of the wife. This clearly proves that husbands use the marriage ceremony as a hook to acquire a license to sexually assault their wife and further proclaims that it is their own right as a husband.

Marital Rape is recognized as an exception in the definition of rape as per in Section 375 of the IPC, which establishes that “sexual relations or sexual activities with a man with his own wife, without the wife being under the age of fifteen, is not rape”. There are two sides of marital Rape; that is from women and men point of view. From women’s side, having sexual intercourse with a wife without her consent amounts to physical and sexual violence as was held in the case of the Krishnarappa vs. State of Karnataka<sup>17</sup>. Also in the case of Suchita Srivastava vs. Administration of Chandigarh<sup>18</sup>, the right to make decisions was given related to sexual activities, with right to freedom, privacy, dignity and bodily integrity under article 21 of the Constitution. The constitutionality of this exception has also been challenged in various petitions for violating Articles 14 and 21 of the Constitution of India. This exception has also created the classification between married and single women, because unlike married women, single women are protected by the IPC but if a married woman is being raped by her husband, then she cannot claim justice under IPC due to lack of legislative provisions with regard to marital rape under the IPC, they can

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<sup>16</sup> YourStory, (November, 12, 2018) [https://yourstory.com/2018/11/sc-declines-entertain-pil-make-rape-gender-neutral-offence?utm\\_pageloadtype=scroll](https://yourstory.com/2018/11/sc-declines-entertain-pil-make-rape-gender-neutral-offence?utm_pageloadtype=scroll)

<sup>17</sup> Krishnarappa vs. State of Karnataka (2000) 4 SCC 75

<sup>18</sup> Suchita Srivastava and Anr. v. Chandigarh Administration, (2009) 9 SCC 1

only go to court with the crime of domestic violence, the punishments of which are different and less strict compared to the provisions of the IPC.

From man's point of view, the term marital rape is itself very insignificant because as per men, marriage itself means that both parties agree mutually for having sexual relations exclusively. There is no need to grant any legality to marital rape.

## **CONSTITUTIONAL VALIDITY:**

### **ARTICLE 14**

Article 14<sup>19</sup> of the constitution talks about equality, but in the case of marital rape, it does not grant equal rights. Generally, when a man has sex with a woman without her consent, it is considered rape and is considered a crime. Ironically, India places more importance on rape where laws on the matter are frequently made and updated and the government also takes many measures to stop rape, but on the other hand, the act of marital rape has not yet received the criminal attention that it must receive and goes unnoticed. Even after the Delhi gang rape case, the Verma committee suggested that marital rape should be listed as a crime in Section 375 of the Indian Penal Code. Many NGOs, organizations and research have shown that women in India are experiencing marital rape, but the government is slow to show concern about this issue.

Article 14 states equality before the law and equal protection of the law, but does not grant the same protection to all women regarding marital rape. The Indian penal code, when it was drafted in the 1860s, did not accept a married woman as a separate legal entity and was always declared as an entity held by the husband. This section also discriminates against married women by denying them the same protection against rape and sexual harassment. This exception has also created the classification between married and single women, because unlike married women, single women are protected by IPC but if a married woman is being raped by her husband then, she cannot claim justice under the IPC due to the lack of legislative provisions regarding marital rape under the IPC, they can only go to court with the crime of domestic violence, the punishments

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<sup>19</sup> Constitution of India 1950, Article 14

of which are different and less strict in comparison with the provisions of the IPC. Therefore, the law violates article 14 of the constitution.

## **ARTICLE 21**

Article 21<sup>20</sup> of the Constitution talks about right to life and personal liberty. It also includes the right to privacy, dignity, health, a safe environment, etc. In the case of *Suchita Srivastava v. Chandigarh Administration*, it was stated that the right to make decisions about sexual activity is also included in the right to personal liberty which is part of article 21. Also in the case of *KS Puttuswamy v. Union of India*<sup>21</sup> the Supreme Court recognized the right to privacy as the fundamental right. Therefore, any forced sexual activity violates one's privacy, which is a fundamental right. Forced sexual intercourse by her husband damages the wife's physical and mental health. Marital Rape violates article 21 of the constitution as it violates her right to life with dignity, because it is entirely the choice of a woman to have or not have sexual relations and she cannot be forced. In *Puttuswamy* case it was also held that the right to privacy also includes 'Decisional Privacy', which means an ability to make intimate decisions that consist primarily of a sexual nature. But marital rape has been ignored and not yet criminalized. Therefore, the law violates article 21 of the Constitution.

## **WIFE'S STATUS:**

This concept talks about whether a married person who has sexual intercourse with his wife falls within the definition of rape. Two possibilities arise, among which one option known to all is "No", and the other possibility is "Yes" if it is done without the wife's consent. In the past, women were considered to be the weaker sex and all rights were denied. After various struggles, women were also considered equal to men in all respects, but the culture that started in the past still holds the position of women in a weaker position. The past world considered women only for the procreation of children and the maintenance of the family, but now they are given the right to participate in all fields. No woman can be denied any benefit because she is a woman, and meanwhile no man can be granted all the rights to everything he acquires because he is a man.

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<sup>20</sup> Constitution of India 1950, Article 21

<sup>21</sup> *KS Puttuswamy v. Union of India* (2017) 10 SCC 1

Although marriage is a contractual relationship as defined, the contracting parties are bound by certain rules. The Indian constitution has its arms open to all the citizens of India regardless of gender, caste, race, etc. It guarantees Fundamental Rights to all its citizens by birth. According to article 21 of the Constitution, every citizen has the right to life and personal liberty, which also includes human dignity. Personal freedom represents any legal desire, so any decision to have sexual intercourse rests not only with the husband, but also with the wife.

Both rape and marital rape share the common root "consent". If the woman's consent is denied, no person has the right to force another gender or person to fulfill their personal wish by violating other rights. The suggestions and wishes of the woman should also be considered similar to those of a man and valid permission is required to enter into contact with a woman. Since marriage consists of being a contractual relationship with the purpose of creating a family and the procreation of a child, any act that is carried out jointly requires the consent of both parties for that contract to remain valid. Therefore, a wife has the right to say no to sexual intercourse. Thus, it clearly explains that a woman is another half equal to a man and does not fall within the term of property acquired by men.

The Government of India passed an act called the Protection of Women against Domestic Violence Act 2005. This act is passed for the purpose of protecting women who are affected in their domestic life. As mentioned above, having sexual intercourse without consent can be declared as a violation of dignity and therefore can be considered a crime. The law that considers this violation a civil offense has provided few civil remedies such as fines, protection, etc. Although it can be before or after marriage, sexual relations without the voluntary consent of men or women constitute rape. Any activity that is offensive to either party cannot be covered under marriage to escape criminal liability.

### **IMPORTANT CASE LAWS:**

In *Queen Empress v. Haree Mythee*<sup>22</sup>, a Bengali minor named Phulmoni Dasee was found dead in her husband's bed. The cause of death was a vaginal rupture. Although the husband was prosecuted for murder, he was not charged with rape. It was considered that because Phulmoni was married to the accused, he could not have raped her.

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<sup>22</sup> *Queen Empress v. Haree Mythee* (1891) ILR 18 Cal 49

In *Sreekumar and Anr. Vs. Pearly Karun*<sup>23</sup>, the wife was forced to have sexual intercourse against her will. The court ruled that the plaintiff could not press charges of rape because she lived with him at the time and does not fall within the scope of Section 376-A, which establishes that “whoever has sexual relations with his own wife, who lives separately from him under a decree of separation or under any custom or use without their consent will be punished with imprisonment of either of the two descriptions for a period that can be extended to two years and will also be subject to a fine<sup>24</sup>. This establishes that the dignity and basic human rights of a person cannot be violated if they live in the same home as the perpetrator.

In cases where the family and the law collide, legislators have difficulty making laws and ensuring the administration of justice. But in cases as violent as rape, the state must not deprive victims of the opportunity to obtain justice and must take a tough stance.

### **INDIAN LAWS REGARDING RAPE OF MALE:**

If we analyze the definition of rape as per section 375 of IPC, we find that it makes two clear inferences:

- A rape offender is necessarily a man.
- A rape victim is necessarily a woman.

Therefore, the whole definition considers the rape of only women and there is no clause for the rape of a man. It states that in India there is no particular law if a man rapes another man or a woman rapes a man. At most, they can be discussed under section 377 clause 10 of the IPC, where unnatural sex is an "act against God". With the exception of this section, all other laws and sections are intended solely for women. Although there is POCSO ("Protection of Children against Sexual Offenses") for sexual assault of a male child, such a provision does not exist for an adult male. Men in India are considered invulnerable and as those who use their power to exploit women. According to a survey, 1,500 men, of whom 71% of the men surveyed said they had been abused, 84.9% said they had not been abused<sup>25</sup>.

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<sup>23</sup> *Sreekumar and Anr. Vs. Pearly Karun* 1999 (2) ALT Cri 77

<sup>24</sup> Indian Penal Code 1860, section 376-A

<sup>25</sup> The Guardian, (May 23, 2018), <https://www.theguardian.com/global-development/2018/may/23/indian-study-male-sexual-abuse-film-maker-insia-dariwala>

Since the interpretation of rape in India is only limited to the insertion of the penis or any object into the vagina, the cases of rape and sexual assault of men have increased continuously, there were many cases where the man was subjected to such crime , but due to the lack of law, nothing happened. For example, on June 16, 2018, a 20-year-old had to endure the sexual assault of five men in Ghaziabad and a foreign object was inserted into his straight, but since our law does not take into account for such a crime, the case was registered under section 377 of the IPC.

The main flaw in the laws for the protection of men against sexual assault is in the constitution itself. Article 14 <sup>26</sup>states that "the state shall not deny any person equality before the law or equal protection of the laws within the territory of India." Also, Article 15<sup>27</sup> states that "the state will not discriminate against any citizen solely on the grounds of religion, race, caste, sex, place of birth, or any of them." Also, subsection 3 of Article 15 establishes that "nothing in this article shall prevent the State from establishing any special provision for women and children." Therefore, it is legal for the state to make the definition of rape focused on women as set out in IPC Section 375. But if we go by this logic, the state through an amendment to Section 375 can protect men as mentioned in Article 15. The state can introduce rape laws that are more gender neutral, since we have to realize that sexual assault is not about sex or gender. Currently, there are only two laws that state that men can also be sexually assaulted.

The first is the "*Protection of Children against Sexual Crimes*" (*POSCO*) which addresses sexual abuse committed against boys and girls.

The second is UGC's "*Sexual Harassment of Women in the Workplace Act*" which recognizes that men are also subjected to a lot of sexual harassment along with women in the workplace.

Therefore, this has increased the demand for gender-neutral rape laws in India.

### **REFORMS AND SUGGESTIONS:**

According to me, the reforms that should be incorporated regarding rape laws are:

- The death penalty should be established for the accused when the violation is of such magnitude as to amount to the death of the victim.

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<sup>26</sup> Constitution of India 1950, Article 14.

<sup>27</sup>Constitution of India 1950, Article 15



- There should be a strict ban on pornographic websites and adult entertainment because nowadays in the age of technology these are accessible to everyone in society and can be accessed even by the child who is not even a teenager hence the Ministry of Information and Technology must take strict measures on this problem.
- There should be some awareness programs in urban and rural areas where children, especially girls, should be aware of the good and bad touch; this will help prevent cases of child abuse.
- There must be legal awareness programs mainly in rural areas to make them understand to not fear from filing cases related to rape and the process involved in filing case and that the police, the judiciary will be able to help them if wished.
- There should be sexual education programs that are organized in schools, to make students aware of these things because it is important to become aware of the reproduction process, especially to make them aware of sterilization, contraceptives etc that make them aware of these private things.
- There should also be fast track courts to deal with rape cases.

According to me, the suggestions that should be incorporated related to rape laws are:

- If the accuser's identity is kept confidential so must that of the accused until he is found guilty.
- If the charge is found to be false, then the accuser must also face trial and imprisonment.
- The Courts should try to ensure justice as soon as possible. They should not extend it too much that an innocent person's life is spoiled. For example, in Vishnu Tiwari case<sup>28</sup>, Vishnu was falsely accused of rape and spent 20 years in jail for a crime which he did not commit. Therefore, the process of justice should be faster so that innocent people's life is not ruined.

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<sup>28</sup> Vishnu Kumar Tiwari v. State of U.P., [\(2019\) 8 SCC 27](#)

## **CONCLUSION:**

Section 375 of the Indian Penal Code is one of the sections that is being talked about due to the increase in the number of rape cases in India. Due to the amendments introduced in recent years, significant changes have been introduced in the section, but there are still quite a few flaws that need to be addressed. From this it can be concluded that Section 375 of Indian Penal Code of 1860 recognizes rape as a crime against women and therefore does not foresee the rape committed against men or transgender. Section 375 is in violation of the provision of articles 14, 15 and 21 of the Constitution. In these articles, the term equality does not mean empowering women, but it means equality before the law and equal protection of the law. Therefore, instead of promoting negative feminism, it is time to turn our laws into gender neutral and promote equality among all. I would conclude that the creators of the section only had a one-sided view regarding as they only thought about the safety of women, but they did not create any remedy to safeguard innocent men in society. In a situation like this, the legislature and the judiciary must work together to achieve an appropriate balance between men and women, ensuring that they are adequately served by the courts. Also in my opinion, in order for the virtue of justice to be upheld, the Judicial and Legislative Power must focus on a solution so that the innocent are not punished. This policy should be formulated in such a way that it can bring justice to the victim of a false accusation of rape. The punishment should be long enough for the women to have an idea of what they will face if they make false accusations against any innocent man in society, along with which they should be ordered to redress the harm suffered by the men during the trial that it can include court fees, litigation fees and other damages. Women who suffer punishment will ensure that men can regain the dignity lost by them during the trial and from the moment the women are punished, it will send the message loud and clear that the accused was innocent, and then it will truly help the man to recover from the trauma he faced during the trial. If this is implemented properly, then cases of false rape can be reduced and justice can be ensured.

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